



29/08/17

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 562 of 2005

Rajendra Kumar Dewangan, S/o Hagruram Dewangan, aged about 34 years, Occupation Tailor, R/o. Village Kaudikasa, District Rajnandgaon (C.G.)

.....Appellant

Versus

1. Kamta Prasad Gupta S/o Vanshgopal Gupta, aged about 47 years, Occupation Cloth Merchant.
2. Smt. Janki Devi Gupta W/o Kamta Prasad Gupta, aged about 44 years, Both resident of Village Kaudikasa, P.S. Ambagarh Chowki, District Rajnandgaon (C.G.)
3. The Oriental Insurance Company through Branch Manager, Branch Kamthi Line, District Rajnandgaon (C.G.)

.....Respondents

For Appellant	:	Shri Basant Dewangan, Advocate
For Respondents 1 & 2	:	Shri Abhishek Sharma, Advocate
For respondent no.3	:	Shri H. P. Agrawal, Advocate

Misc. Appeal No. 473 of 2005

1. Kamta Prasad Gupta, aged about 47 years, S/o Shri Vansh Gopal Gupta, occupation Cloth Merchant.
2. Smt. Janki Devi Gupta W/o Kamta Prasad, aged about 44 years, Both are resident of Village Kaurikasa, Police Station Ambagarh Chowki, District Rajnandgaon (C.G.)

.....Appellants

Versus

1. Rajendra Kumar Dewangan, aged about 34 years, S/o Hagruram Dewangan, Vehicle driver/owner, R/o Dhangaon, P.S. Dongargaon, District Rajnandgaon (C.G.)
Presently residing at village Kaurikasa, Police Station Ambagarh Chowki, Distt. Rajnandgaon (C.G.)
2. Oriental Insurance Company through Branch Manager, Kamthi Line, Rajnandgaon (C.G.)

.....Respondents

For Appellants	:	Shri Abhishek Sharma, Advocate
For Respondent no.1	:	Shri Basant Dewangan, Advocate
For Respondent no.2	:	Shri H. P. Agrawal, Advocate



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Misc. Appeal No. 628 of 2005

Rajendra Kumar Dewangan S/o Hagruram Dewangan, aged about 34 years, Occupation Tailor, R/o Village Kaudikasa, District Rajnandgaon (C.G.)

.....Appellant

Versus

The Oriental Insurance Company through Branch Manager, Branch Kamthi Line, District Rajnandgaon (C.G.)

.....Respondent

For Appellant	:	Shri Basant Dewangan, Advocate
For Respondent	:	Shri H. P. Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

11/08/2017

These are the three appeals assailing the award dated 18.02.2005 passed by the 1st Additional Motor Accident Claims Tribunal, Rajnandgaon in Claim Case Nos.130/2003 and 138/2003. M.A. No. 562/05 is an appeal preferred by owner of the vehicle where the liability has been fastened upon the owner exonerating the liability from the Insurance Company has been challenged. M.A. No. 473/05 is an appeal preferred by the claimants seeking for enhancement of the compensation awarded by the Tribunal. MA. No. 628/05 is an appeal preferred by the owner challenging the impugned award where his claim for personal injuries has been rejected by the Tribunal.

2. Since the facts involved in these three appeals are identical arising out of the same accident, this Court proceeds to decide the three appeals by this Common order. For convenient sake, Rajendra Kumar Dewangan who is the appellant in MA Nos. 562/05 & 628/05 and respondent no.1 in 473/05 is referred as 'the owner' and Kamta Prasad Gupta and Smt. Janki Devi Gupta who are the respondents 1 & 2 in MA No. 562/05 and appellants in MA No. 473/05 are referred as 'the claimants'.



3. Before dealing with the contents of the case it would be necessary to narrate the facts of the case in brief. On 14.09.2003, the owner Rajendra Kumar Dewangan was riding the offending motorcycle LML Freedom bearing registration No. CG08 E/3350 as a pillion rider and Kamlesh Gupta and Girdhari Sahu were sitting behind rajendra Kumar. While the owner was driving the said motor-cycle, because of rain, the motorcycle got slipped causing accident as a result of which Kamlesh Gupta received grievous injuries to which he later succumbed. Girdhari Sahu also received injuries so also the owner Rajendra Kumar. A Criminal Case was also registered against the owner Rajendra Kumar at Police Station Ambagarh, District Rajnandgaon in Crime No.139/03 where the owner was prosecuted for the offence punishable under Sections 273, 337, 338 and 304A and also Section 3/181 of the MV Act. The legal representatives of deceased Kamlesh i.e. the claimants herein and the injured Girdhari Sahu filed their claim applications under Section 166 of the Motor Vehicles Act which were registered as Claim Case Nos. 130/03 and 138/03 respectively. The owner Rajendra Kumar also filed a claim case under Section 163A of the MV Act. What is relevant at this juncture is that the entire case was proceeded before the Tribunal with the stand that the owner Rajendra Kumar was not having a licence to drive the motorcycle at the relevant point of time.

4. After conclusion of the pleadings and recording of the evidences, the Court below vide impugned award dated 18.02.2005 rejected the claim application of the owner Rajendra Kumar filed under Section 163A of the MV Act on the ground that the accident occurred because of the negligence of the owner himself in addition to his not having a driving licence to drive the motorcycle. So far as the application of the claimants i.e. the legal representatives of deceased Kamlesh is concerned, the Tribunal awarded compensation of Rs.86,000/- with interest @ 6% per annum from the date of

application to the claimants. Likewise, the Tribunal awarded compensation of Rs.10,000/- with interest @ 6% per annum to the injured Girdhari Sahu while allowing the claim application. Since the owner/driver of the motorcycle Rajendra Kumar did not have a driving licence at the time of accident, the Tribunal exonerated the Insurance Company from the liability of making compensation and fastened the liability of payment of compensation to the claimants upon the owner of the motorcycle Rajendra Kumar Dewangan.

5. It is this award which is under challenge in the present three appeals.

6. Counsel for the owner Rajendra Kumar Dewangan submits that the Court below did not grant sufficient opportunity to the owner to produce the licence that he had for driving the alleged LML Freedom motorcycle and therefore this Court may consider to remit the matter back to the Tribunal so that the owner may adduce sufficient evidence to substantiate his contention with which the liability could be shifted upon the Insurance Company. He further submits the owner has also moved an application under Order 41 rule 27 of CPC for taking the licence which was issued in favour of the owner in the year 1994 on record with which he may be permitted to lead additional evidence.

7. Counsel appearing for the Insurance Company opposing the appeals submits that there is ample evidence which had been adduced before the Tribunal with which it has been established that the owner Rajendra Kumar was not having a valid licence at the time of accident. He drew the attention of this Court to the evidence of the RTO, Rajnandgaon Shri Suresh Ku. Yadu who had deposed before the Tribunal that in fact the owner had for the first time applied for grant of licence only on 26.09.2003 whereas the accident took place on 14.09.2003 which shows that the application for licence was applied much after the accident. This also proves that on the relevant date the owner did not have a licence at all to drive the motorcycle. Thus, counsel for the Insurance Company prayed for rejection of the appeal of the owner.



8. Having considered of the rival contentions put forth on either side and on perusal of the record what is glaring at this stage is that against the award passed in favour of injured Girdhari Sahu, the appellant/owner Rajendra Kumar had also preferred an appeal before this High Court which was registered as MA No. 561/05. The said appeal stood dismissed by the High Court vide order dated 16.09.2009. As a result of the dismissal of the said appeal, the finding of the Tribunal to the extent of exonerating the Insurance Company and fastening the liability upon the owner of the motorcycle has attained finality. The owner Rajendra Kumar has moved an application under Order 41 Rule 27 of CPC for taking additional evidence on record supporting his contention i.e. a licence which was issued in the year 1994. But what is also pertinent to take note is that though he had a licence of 1994, he had never taken such a defence during the proceedings before the Tribunal of the fact that he had a licence, neither did he cross-examine the RTO in respect of his having a licence issued much earlier from the date of accident. This fact creates a great element of doubt in the mind of the Court so far as the bonafide of moving an application under Order 41 Rule 27 of CPC which thus deserves to be and is accordingly rejected.

9. Given the aforesaid factual matrix of the case, this Court is of the opinion that the owner Rajendra Kumar has not been able to establish his case by any substantive or strong material to hold that the finding of the Tribunal was incorrect, calling for an interference. Thus, the appeal of the owner Rajendra Ku. Dewangan challenging the award dated 18.02.2005 in MA No. 562/05 deserves to be and is accordingly dismissed.

10. Keeping the aforesaid factual matrix in mind when we look into the order passed by the Tribunal rejecting the claim of the owner Rajendra under Section 163A of MV Act, this Court has no hesitation in reaching to the conclusion that in the aforesaid factual matrix once when it has been established that the owner

Rajendra was not having a licence at the time of accident, the same would have definitely amounted as to negligence on the part of the owner to have driven the motorcycle on the said date without a licence. Thus, the appeal of the owner Rajendra Kumar in MA No.628/05 also deserves to be and is accordingly rejected.

11. So far as the claim of the claimants i.e. the appellants in MA. No.473/05 who are the legal representatives of deceased Kamlesh Gupta is concerned, counsel appearing for the claimants submits that the Tribunal has not applied the proper multiplier for quantifying the compensation. According to the counsel for the claimants, the multiplier applied by the Tribunal is that of 10 whereas considering the fact that the deceased at the time of accident was aged around 23 years, the multiplier ought to have been 18 as per the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in (2009) 6 SCC 121 and the subsequent decisions.

12. The contention of the counsel for the claimants has merit as the law in this regard by now is well settled and therefore, the multiplier in the instant case has to be 18 instead of 10 as has been taken by the Tribunal. It is ordered accordingly.

13. It is further contended by the counsel for the claimants that the income of the deceased which has been taken by the Tribunal is also on the lower side as the Tribunal has taken only Rs.1,000/- as the monthly income of the deceased which is even much less than the minimum wages. According to the counsel for the claimants, the Tribunal ought to have taken at least Rs.3,000/- as the monthly income of the deceased taking Rs.100/- a day to be the minimum wage of an unskilled labour at the relevant point of time. He further submits that the Tribunal has also not considered the future prospects while quantifying the compensation.

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14. However, from the record it reflects that the claimants have not been able to show any sort of employment which the deceased had at the time of accident and therefore, for all practical purpose, this Court is of the opinion that the Tribunal ought to have taken the income of the deceased of Rs. 2,000/- a month instead of Rs.1,000/- which would make the yearly income of the deceased at Rs.24,000/-. If 50% of the income is added towards future prospects, the amount would be Rs.36,000/- of which if 50% is deducted towards personal income, the amount comes to Rs.18,000/-. If the said amount is multiplied by applying the multiplier of 18, the amount would be Rs.3,24,000/-. Thus, the claimants would be entitled for compensation of Rs.3,24,000/- towards loss of dependency in stead of Rs.84,000/- as awarded by the Tribunal. Rest of the award in Claim Case No. 130/03 as has been awarded by the Tribunal including the interest part shall remain intact.

15. As a consequence, the appeals of the owner Rajendra Kumar in MA Nos. 562/05 and 628/05 stand dismissed and the appeal of the claimants i.e. the legal representatives of deceased Kamlesh Gupta in MA No.473/05 stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE